NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PHU VAN HUYNH, Petitioner-Appellant, v. ROY A. CASTRO, Warden Respondent-Appellee.	No. 04-55810 D.C. No. CV-99-04086-FMC MEMORANDUM[1]

Appeal from the United States District Court
for the Central District of California
Florence-Marie Cooper, Judge, Presiding

Argued and Submitted October 21, 2005
Pasadena, California

Before: PREGERSON, CLIFTON, Circuit Judges, and HICKS, District Judge.[2]

Appellant Phu Van Huynh appeals the district court's denial of his petition for writ of habeas corpus. Two issues have been certified for appeal: (1) Whether the prosecutor engaged in impermissible vouching during closing arguments; and

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[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

[2] The Honorable Larry R. Hicks, District Court Judge for the District of Nevada, sitting by designation.

(2) whether Appellant's trial counsel was ineffective for failing to object to the alleged impermissible vouching at closing argument. Appellant has also briefed several uncertified issues.

We have reviewed the district court's decision to deny the habeas petition *de novo*, seeking to determine whether the state court's adjudication on the merits resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law. *Arnold v. Runnels*, 421 F.3d 859, 862 (9th Cir. 2005); *Delgado v. Lewis*, 223 F.3d 976, 981-82 (9th Cir. 2000).

We find that none of the statements placed "the prestige of the government behind a witness," *United States v. Leon-Reyes*, 177 F.3d 816, 821 (9th Cir. 1999) (citing *United States v. Necoechea*, 986 F.2d 1273, 1276 (9th Cir. 1993)), in a manner that "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Darden v. Wainwright*, 477 U.S. 168, 181 (1986) (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974)). Even if an error was found to exist, it would undoubtedly be harmless. *See Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993) (under harmless error standard reversal is warranted only when the error has a "substantial and injurious effect or influence in determining the jury's verdict"). Accordingly, Appellant's ineffective assistance of counsel claim must also fail as no injury to Appellant can be shown. *See Ewing*

v. Williams, 596 F.2d 391, 395 (9th Cir. 1979) (providing that "the law in this Circuit is clear that where an allegation of ineffective assistance of counsel is premised on specific acts or omissions of counsel, the allegation must be buttressed by a showing of injury or prejudice to the defendant.").

We have reviewed the uncertified issues briefed by Appellant, construing them as a motion to expand the certificate of appealability as required by Circuit Rule 22-1(e). We conclude that Appellant has not made a "substantial showing of the denial of a constitutional right," *Pham v. Terhune*, 400 F.3d 740, 742 (9th Cir. 2005) (internal quotations omitted), and therefore determine it is not appropriate to address Appellant's uncertified issues. Ninth Circuit Rule 22-1(e).

AFFIRMED.